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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Janos GERGELY et al.**

Application No.: **09/916,004**

Examiner: **NGUYEN, Chi Q.**

Filed: **July 26, 2001**

Group Art Unit: **3637**

Title: **COMPOSITE SYSTEMS AND METHODS FOR
ANCHORING WALLS**

**RESPONSE TO OFFICE ACTION
AND REQUEST FOR RECONSIDERATION**

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Sir:

This Request for Reconsideration is filed in response to the non-final Office Action mailed May 28, 2003.

The originally-filed application claimed priority to U.S. Provisional Patent Application No. 60/244,301, filed October 31, 2000. This Office Action, as well as the previous Office Action mailed October 9, 2002, however, does not acknowledge the claim for domestic priority under 35 U.S.C. § 119(e). Applicant respectfully repeats its request that the Office acknowledge the claim for priority to the above-mentioned provisional application.

Claims 1-31 are pending in the Application. Claims 1-7, 11-18, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,003,276 to Hegemier et al. (hereinafter "Hegemier"). Claims 8-10 and 19-21 are rejected under 35

U.S.C. § 103(a) as being unpatentable over Hegemier in view of U.S. Patent No. 4,903,450 to Adams (hereinafter “Adams”). Claims 23-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hegemier in view of Adams.

Applicant respectfully traverses these rejections. Reconsideration of the pending claims is respectfully requested in view of the following remarks.

A. Claims 1-7, 11-18 and 22

The Office Action rejected claims 1-7, 11-18 and 22 under 35 U.S.C. § 102(b) as being anticipated by Hegemier. The rejection is improper under 35 U.S.C. § 102(b) as the issue date of Hegemier, *i.e.*, December 21, 1999, is less than one year prior to the effective filing date of the Application, *i.e.*, October 31, 2000. As discussed above, the Application claims the benefit of priority under 35 U.S.C. § 119(e) to U.S. Provisional Patent Application No. 60/244,301, which was filed on October 31, 2000. *See* MPEP § 706.02.

Notwithstanding the improper rejection under 35 U.S.C. § 102(b), the rejection is improper because Hegemier does not disclose each and every element of the claims at issue. A claim is anticipated by a prior art reference only if each and every element as set forth in the claim is found. *See* MPEP § 2131 (citing *Verdegel Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051 (Fed. Cir. 1987)).

Independent claims 1 and 14 each claim a construction system, which includes “the first portion of each anchoring device fixedly attached to the structural member . . . wherein each anchoring device comprises a fiber composite material.” Claims 2-7 and 11-13 depend

ultimately from independent claim 1. Claims 15-18 and 22 depend ultimately from independent claim 14.

Hegemier does not disclose a construction system that includes “the first portion of each anchoring device fixedly attached to the structural member . . . wherein each anchoring device comprises a fiber composite material,” as claimed.

In contrast, Hegemier describes that, “after the base strip 36 [of fiber composite material] is applied [to the first side 32 of the wall 20] and cured, a right-angle tie 40 having a vertical leg 42 and a horizontal leg 44 is positioned with the vertical leg 42 contacting the [cured] base strip 36” *See* Hegemier at col. 5, line 66 to col. 6, line 3 (emphasis added). As the vertical leg 42 merely contacts the cured base strip 36 that has been applied to the wall 20, the vertical leg 42 is not fixedly attached to the wall 20. Furthermore, Hegemier describes that the tie 40 is made of steel, which does not comprise a fiber composite material. *See* Hegemier at col. 6, lines 17-20.

Hegemier goes on to describe that, “[a]n overlay layer 52 of a fiber composite material is applied to the first side 32 of the wall 20 . . . [and] covers the face of the wall and also overlies the base strip 36 and the vertical legs 42 of the [steel] ties 40. The vertical legs 42 of the [steel] ties 40 are thereby captured between and sandwiched between the base strip 36 and the overlay layer 52.” *See* Hegemier at col. 6, lines 34-40 (emphasis added).

Thus, Hegemier does not disclose “the first portion of each anchoring device fixedly attached to the structural member . . . wherein each anchoring device comprises a fiber composite material.” Rather, Hegemier describes that the vertical leg 42 of the steel tie 40 contacts the cured base strip 36 and is captured between the base strip 36 and the overlay

layer 52. Furthermore, while the steel tie 40 is disposed between two layers of fiber composite material (36, 52), the steel tie 40 itself does not comprise the fiber composite material.

Moreover, Hegemier does not contemplate “the first portion of each anchoring device fixedly attached to the structural member” Hegemier describes a function of the composite material layers 36 and 52 as transferring “the stresses produced by the out-of-plane (direction 30) flexural force on the wall into the ties [40], which first deform elastically and then, under extreme loadings, plastically to absorb the energy” Thus, the stresses in Hegemier are absorbed by the anchoring devices rather than being transferred to the base member, whereas fixedly attaching the first portion of each anchoring device to the structural member transfers such stresses to the base member, *e.g.*, foundation, rather than being absorbed by the anchoring devices alone.

As Hegemier does not disclose each and every element of each of independent claims 1 and 14, Applicant respectfully submits that independent claims 1 and 14 are each patentable over Hegemier. Claims 2-7, 11-13 depend ultimately from claim 1 and claims 15-18 and 22 depend ultimately from claim 14 and are, therefore, also allowable for at least the same reasons as independent claims 1 and 14. Accordingly, the rejection to claims 1-7, 11-18, and 22 should be withdrawn and the claims allowed.

B. Claims 8-10 and 19-21

Claims 8-10 and 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hegemier in view of Adams. Claims 8-10 depend ultimately from independent claim 1 and claims 19-21 depend ultimately from independent claim 14.

One of the criteria for a prima facie case of obviousness is that “the prior art reference (or references when combined) must teach or suggest all the claim limitations.” *See* MPEP § 2143. The cited references do not teach or suggest all the claim elements of each of independent claim 1 and 14. Each of claims 8-10 and 19-21 each claim a construction system, which includes “the first portion of each anchoring device fixedly attached to the structural member . . . wherein each anchoring device comprises a fiber composite material.”

As discussed above, Hegemier does not disclose a construction system that includes “the first portion of each anchoring device fixedly attached to the structural member . . . wherein each anchoring device comprises a fiber composite material,” as claimed.

The Office Action cites Adams for teaching a “concrete footer block and foundation system comprising a base for footer blocks 10 having internal groove 18a, 18b, an anchoring device 30 is partially disposed within the groove along with reinforcement rods or elongated members 24 disposed within the groove.” Adams, however, does not disclose a construction system that includes “the first portion of each anchoring device fixedly attached to the structural member . . . wherein each anchoring device comprises a fiber composite material,” as claimed.

Thus, neither Hegemier nor Adams teaches or suggests, singularly or in combination, all the claim elements of each of claims 8-10 and 19-21. Applicant respectfully submits that

claims 8-10 and 19-21 are each patentable over Hegemier in view of Adams. Accordingly, the rejection to claims 8-10 and 19-21 should be withdrawn and the claims allowed.

C. Claims 23-31

Claims 23-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hegemier in view of Adams. Claims 24-31 depend ultimately from independent claim 23.

As discussed above, one of the criteria for a prima facie case of obviousness is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. Applicant respectfully traverses the rejection to independent claim 23 because neither Hegemier nor Adams, singularly or in combination, teaches or suggests every element of independent claim 23.

Claim 23 claims a construction method for anchoring a structural member of a building to a base member of a building, which includes “fixedly attaching a first portion of a composite fiber anchor to the structural member.”

As discussed above, Hegemier does not disclose “fixedly attaching a first portion of a composite fiber anchor to the structural member,” as claimed. Also as discussed above, Adams does not disclose “fixedly attaching a first portion of a composite fiber anchor to the structural member,” as claimed. Thus, neither Hegemier nor Adams, singularly or in combination, teaches or suggests every element of independent claim 23.

Therefore, Applicant respectfully submits that independent claim 23 is patentable over Hegemier in view of Adams. Claims 24-31 depend ultimately from claim 23 and are,

therefore, also allowable for at least the same reasons as claim 23. Accordingly the rejection to claims 23-31 should be withdrawn and the claims allowed.

CONCLUSION

Applicant respectfully submits that claims 1-31 are allowable. A favorable Office Action is respectfully solicited. The Examiner is invited to contact the undersigned by telephone to discuss any matter related to the Application.

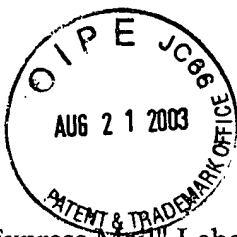
Respectfully submitted,

Dated: August 21, 2003

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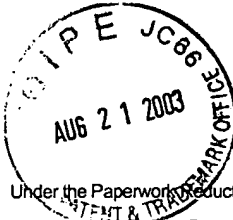
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Firm or Individual name	Goran P. Stojkovich, Kilpatrick Stockton LLP
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Date	August 21, 2003

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